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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 202

STATE OF CALIFORNIA, CALIFORNIA POLYTECHNIC SCHOOL AND CALIFORNIA STATE BOARD OF EQUALIZATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 75-81) is reported at 96 F. Supp. 318. The *per curiam* opinion of the Court of Appeals affirming the decision of the District Court (R. 126) is reported at 195 F. 2d 530.

JURISDICTION

The judgment of the Court of Appeals (R. 127) was entered April 11, 1952. A petition for rehear-

ing was denied May 17, 1952. (R. 128.) The petition for a writ of certiorari was filed on July 16, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether a State can be joined as a party defendant in a suit by the United States under Section 3678 of the Internal Revenue Code to foreclose liens for federal taxes assessed against individuals to whom the State is indebted.

2. Whether, if the State can be joined in such a foreclosure suit, the United States should, in order to collect any amount owed by the State to the individual taxpayers, be relegated to such remedies and procedures as are available to the individuals in enforcing their claim against the State.

STATUTE INVOLVED

The pertinent provisions of the Internal Revenue Code are printed in the Appendix hereto, *infra,* pp. 8-11.

STATEMENT

The facts found by the District Court (R. 83-94) are not in dispute. So far as material to the issues here involved they are, briefly, that the taxpayers, Warren C. Graham and Agnes B. Graham, are now and at all times material hereto have been husband and wife, domiciled in the State of California. (R. 86.) Prior to the commencement of this foreclosure proceeding the Commissioner had assessed certain federal taxes against the taxpayers, for which liens had attached to all prop-

erty and rights to property of the taxpayers, and notices of which liens had been duly filed. (R. 87-91.)

At the time of the trial, and at all times subsequent to June 30, 1948, the State of California was indebted to the taxpayers in the sum of $3,587.51 arising from the rental of real property and automotive equipment which the taxpayers owned and had leased to the California Polytechnic School during the period of July 1, 1946, to June 30, 1948. The State of California and its agencies here involved apparently claim the right to offset this sum of $3,587.51 against a greater amount owed by the taxpayers as taxes and penalties to the State (R. 92-94.)

ARGUMENT

The grounds advanced for granting the petition (Pet. 23-26) present two general questions: first, whether a State can be joined as a party defendant in a suit by the United States under Section 3678 of the Internal Revenue Code to foreclose its liens for federal taxes; and, second, if a State can be so joined, whether as to it the United States is limited to such remedies and procedures as are available to the delinquent taxpayer for enforcing his claim against such State.

1. The State of California was properly included as a party in the proceeding below.[1] The United States has a lien upon all property and rights to

[1] The state agencies which were also joined stand in no different position than the state itself and no separate discussion of their inclusion is necessary.

property, whether real or personal, belonging to any person liable to pay any federal tax who neglects or refuses to pay such tax after demand therefor. Section 3670 of the Internal Revenue Code, Appendix, *infra*. As to the taxes here involved the lien arose as of the dates the several assessment lists were received by the Collector of Internal Revenue. Section 3671 of the Code, Appendix, *infra*. These liens attach not only to all property or rights to property then owned by the taxpayer, but also to all property or rights to property thereafter acquired by the taxpayer. *Glass City Bank* v. *United States*, 326 U. S. 265. However, provision is made in Section 3672 of the Code, Appendix, *infra*, for recording tax liens of the United States for the protection of mortgagees, pledgees, purchasers, and judgment creditors.

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property to satisfy such tax liability, whether a distraint proceeding as authorized by law has been begun or not, Section 3678 of the Code, Appendix, *infra*, authorizes a civil action in the proper United States District Court to enforce the tax liens of the United States upon any property and rights to property, whether real or personal, or to subject any such property or rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. Subsection (b) of Section 3678 of the Code requires that in any such foreclosure action all "persons" having liens upon

or claiming any interest in the property or rights to property sought to be subjected to a tax lien of the United States "shall be made parties to such proceedings and be brought into court."

Although the general definition of "person" in Section 3797 (a) (1) of the Code (Appendix, *infra*, p. 11) does not make specific reference to a State, the authorities support the decision below holding that the State of California is a "person" within the meaning of the statute and was properly included as a defendant in this foreclosure suit. The question here presented was inherent in *Michigan* v. *United States*, 317 U.S. 338, but was passed over without comment in this Court's opinion. In *United States* v. *State of Minnesota*, 19 A.F.T.R. 1362 (D. Minn. 1937), there is a direct holding that a state is a "person" under the Code. Moreover, the term "person" as used in other federal statutes has been held to include a state. *Ohio* v. *Helvering*, 292 U.S. 360, 370-371, and cases cited; *Georgia* v. *Evans*, 316 U.S. 159, and cases cited; *California* v. *United States*, 320 U.S. 577, 585.

Assuming, on the basis of the foregoing, that Congress intended to include States among the persons to be joined in an enforcement action on a lien, it is well established that there is no constitutional objection to the vesting of jurisdiction in the district courts to adjudicate the State's liability to the United States in this proceeding. See *California* v. *Southern Pacific Co.*, 157 U.S. 229, 261; *United States* v. *California*, 297 U.S. 175, 187, and cases

cited; *Minnesota* v. *United States,* 125 F. 2d 636, 639 (C.A. 8th), and cases cited.

2. There is no authority for restricting the United States, in a suit to foreclose its tax liens against a delinquent taxpayer to whom a state is indebted, to such remedies and procedures as the delinquent taxpayer may have against the debtor state, as contended by petitioners. (Pet. 25-26.) The United States has authority to lay and collect the taxes here involved, and to pass all laws necessary to the enforcement of its rights. This action is to foreclose the liens of the United States upon all property and rights to property of the delinquent taxpayers. Admittedly the liens of the United States are prior and paramount to any claim of the State of California against the same taxpayers. The United States, in its sovereign capacity, should not be "restricted to foreclosing its liens upon any cause of action that a delinquent taxpayer might have against a State or one of its duly constituted agencies." (Pet. 25.) There are here involved the relative rights of the United States and the State of California to monies owed by the State to the taxpayers, not the correlative rights of the State and the taxpayers with the United States an interested observer. No authority would justify a decision that in a case such as this the right of the United States to collect its taxes should "be decided by the courts that should be burdened with that task, namely, the State courts." (Pet. 25-26.)

CONCLUSION

The decision below is right. It is supported by the facts and the law, and is not in conflict with any other appellate court decision. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

ELLIS N. SLACK,
Acting Assistant Attorney General.

FRED E. YOUNGMAN,
Special Assistant to the Attorney General.

AUGUST 1952.

Internal Revenue Code:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C., 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C., 1946 ed., Sec. 3671.)

SEC. 3672 [As amended by Sec. 401, Revenue Act of 1939, c.247, 53 Stat. 862, and Sec. 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U.S.C., 1946 ed., Sec. 3672.)

SEC. 3678. CIVIL ACTION TO ENFORCE LIEN ON PROPERTY.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed,

in a district court of the United States, to enforce the lien of the United State for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) *Parties to Proceedings.*—All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) *Adjudication and Decree.*—The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.*—In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(26 U.S.C., 1946 ed., Sec. 3678.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.*—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3797.)

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